IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1661 of 2002

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? :

2. To be referred to the Reporter or not? :

3. Whether Their Lordships wish to see the fair copy of the judgement? :

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? :

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? :

SAKARBEN ALIAS LILABEN VASANTBHAI BATTISE & ANR.

Versus

STATE OF GUJARAT & ORS.

Appearance:

1. Special Civil Application No. 1661 of 2002

MR AJ SHASTRI for Petitioners Nos. 1-2

MR HL JANI, AGP for Respondents Nos. 1-2

MR JG SHAH, SR.ADVOCATE with MR HARSHAD J SHAH for Respondent No. 3

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 25/08/2004

ORAL JUDGEMENT

Heard the learned advocates.

The petitioners before this Court are the parents of late Shri Mahendrabhai Vasantbhai Battise. The said Mahendrabhai Battise was appointed as Unarmed Police Constable under the District Superintendent of Police, Bharuch in the year 1996. The said Mahendrabhai Battise died on 19th August, 2001. The petitioners have claimed that the late Shri Mahendrabhai Battise had made nomination in favour of the petitioners and that they being the parents of late Mahendrabhai Battise, are entitled to receive the terminal benefits payable on the death of the said Mahendrabhai Battise. The respondent No.6 is the widow of the said Mahendrabhai Battise. She had married to the said Mahendrabhai Battise on 6th May, 2000.

On 1st February, 2002 this Court (Coram: P.B.Majmudar, J.) directed notice to issue to the respondents. It was further directed that, "...In the mean while, the amount in question may not be disbursed in favour of any one, if not disbursed so far." In spite of the aforesaid order a sum of Rs.67,636=00 came to be paid to the petitioners under various heads after the said date i.e. 1st February, 2002. This Court (Coram: P.B.Majmudar, J.), by order dated 2nd May, 2003, observed that several officers in the office of the District Superintendent of Police were responsible for making the said payment in contravention of the direction issued by the Court. Thereupon the petitioners volunteered to deposit the said amount in this Court. Accordingly, a sum of Rs.67,636=00 has been deposited in this Court on 24th June, 2003.

It is not in dispute that the respondent No.3 was legally married to the said Mahendrabhai Battise on 6th May, 2000 and that she is the widow of the said Mahendrabhai Battise. Learned advocate Mr.Shashtri has, however, submitted that ever since their marriage there was a discord between the said Mahendrabhai Battise and the respondent No.3. The respondent No.3 deserted the said Mahendrabhai Battise within few days of their marriage and ever since she was residing with her parents at her maiden home at Surat. At the time of the death of the said Mahendrabhai Battise also the respondent No.3 was not present at Bharuch. Mr.Shashtri has, therefore, submitted that the respondent No.3 is not entitled to receive the terminal benefits payable on the death of the said Mahendrabhai Battise. Even if she is held to be entitled to receive such terminal benefits in view of

Section 8 of the Hindu Succession Act, 1956, the petitioner No.1, the mother of the said Mahendrabhai and the respondent No.3 shall have equal share in such terminal benefits. He has also relied upon the nomination made by the said Mahendrabhai Battise and has submitted that the said nomination was made in favour of the petitioners on 12th August, 2000 i.e. after the said Mahendrabhai Battise married to the respondent No.3. Thus, the wishes of the said Mahendrabhai Battise had expressly been recorded. The amount of terminal benefits, therefore, shall be paid to the present petitioners.

I see no substance in either of the contentions raised by Mr.Shashtri. The respondent No.3 has specifically denied the allegation that she had deserted the said Mahendrabhai Battise and that she was not living with the said Mahendrabhai Battise at her matrimonial home. However, even if it is believed that the respondent No.3 had deserted the said Mahendrabhai Battise and that she was not living with the said Mahendrabhai Battise as alleged by the petitioners, it is not disputed that on the date of the death of the said Mahendrabhai Battise the marriage of the said Mahendrabhai Battise with the respondent No.3 was still subsisting. If under the relevant law it is the widow who is entitled to receive the terminal benefits, the same cannot be denied on the ground that she had deserted the deceased or that there was discord between her and the deceased.

As for the nomination, it should be noted that the said nomination was made under Rule 7 of the Bombay General Provident Fund Rules (hereinafter referred to as 'the Rules'). The said nomination and the payment of the amount of General Provident Fund shall be governed by the provisions made in the Rules. The rules relevant for the purpose of the present petition shall be Rules 2(1)(c)(i); 7 and 30, which read as under :

2. (1) In these rules---
(a)... ... ...
(b)... ... ...
(c)"Family" means---
(i): in the case of a male subscriber, the wife or wives and children of a subscriber and, the widow, or widows, and children of a deceased son of the subscriber:

Provided that if a subscriber proves that his wife has been judicially separated from him

or has ceased under the customary law of the community to which she belongs to be entitled to maintenance she shall henceforth be deemed to be no longer a member of the subscriber's family in matters to which these rules relate, unless the subscriber subsequently intimates by express notification in writing to the Account Officer that she shall continue to be so regarded:

7. (1) A subscriber shall at the time of joining the Fund send to the Account Officer through the Head of Office a nomination conferring on one or more persons the right to receive the amount that may stand to his credit in the Fund, in the event of his death, before that amount has become payable or having become payable, has not been paid.

Provided that if at, any time of making the nomination, the subscriber has a family, the nomination shall not be in the favour of any person or persons other than the members of his family:

Provided further that the nomination made by the subscriber in respect of any other Provident Fund to which he was subscriber before joining the fund shall, if the amount to his credit in such other provident fund has been transferred to his credit in the fund, be deemed to be a nomination duly made under this rule until he makes a nomination in accordance with this rule.

(2) If a subscriber nominates more than one person under sub-rule (1), he shall specify in the nomination the amount or share payable to each of the nominees in such manner as to cover the whole of the amount that may stand to his credit in the Fund at any time.

(3) Every nomination shall be in such one of the Forms set forth in the First Schedule as is appropriate in the circumstances.

(4) A subscriber may at any time cancel a nomination by sending a notice in writing to the Account Officer:

Provided that the subscriber shall, either along with such notice, or separately

send, a fresh nomination made in accordance with the provision of this rule.

(5) A subscriber may provide in a nomination---

(a) in respect of any specified nominee, that in the event of his pre-deceasing the subscriber, the right conferred upon that nominee shall pass to such other person or persons as may be specified in the nomination, provided that such other person or persons, shall, if the subscriber has other members of his family, be such other member or members;

(b) that the nomination shall become invalid in the event of the happening of a contingency, specified therein; provided that if at the time of making the nomination the subscriber has no family, he shall provide in the nomination that it shall become invalid in the event of his subsequently acquiring a family:

Provided that if at the time of making the nomination the subscriber has only one member of the family, he shall provide in the nomination that the right conferred upon the alternate nominee under clause (a) shall become invalid in the event of his subsequently acquiring other member or members in his family.

5(A) where a subscriber nominates more than one person under this rule, he shall specify the share payable to each of such persons so however that the whole of the amount in the subscriber's account is apportioned by such nomination.

(6) Immediately on the death of a nominee in respect of whom no special provision has been made in the nomination under clause (a) of sub-rule (5) or on the occurrence of any event by reasons of which the nomination becomes invalid in pursuance of clause (b) of sub-rule (5) or the proviso thereto, the subscriber shall send to the Account Officer a notice in writing cancelling the nomination, together with fresh nomination made in accordance with the provisions of this rule.

(7) Every nomination made, and every notice of cancellation given by a subscriber shall, to the extent that it is valid, take effect on the date

on which it is received by the Account Officer.

30. On the death of a subscriber before the amount standing to his credit has become payable, or where the amount has become payable before payment has been made---

(i) when the subscriber leaves a family---

(a) if a nomination made by the subscriber in accordance with the provisions of rule 7 or the corresponding rule heretofore in force in favour of a member or members of his family subsists, the amount standing to his credit in the Fund or the part thereof to which the nomination relates shall become payable to his nominee, or nominees in the proportion specified in the nomination:

(b) if no such nomination in favour of a member or members of the family of the subscriber subsists, or if such nomination relates only to a part of the amount standing to his credit in the Fund, the whole amount or the part thereof to which the nomination does not relate, as the case may be, shall notwithstanding any nomination purporting to be in favour of any person or persons other than a member or members of his family, become payable to the members of his family in equal share:

Provided that no share shall be payable to---

(1) sons who have attained legal majority;
(2) sons of a deceased son who have attained legal majority;
(3) married daughter whose husband are alive;
(4) married daughters of a deceased son whose husband are alive,

if there is any member of the family other than those specified in clauses (1), (2), (3) and (4):

Provided further that the widow or widows and the child or children of a deceased son shall receive between them in equal parts only the share which that son would have received if he had survived the subscriber and had been exempted

from the provisions of clause (1) of the first proviso;

(ii) when the subscriber leaves no family, if a nomination made by him in accordance with the provisions of rule 7 or the corresponding rule heretofore in force in favour of any person or persons subsists, the amount standing to his credit in the Fund or the part thereof, to which the nomination relates, shall become payable to his nominee or nominees in the proportion specified in the nomination.

It should be noted that the parents of the subscriber are not included in the "family" of the subscriber. In other words, the parents of a subscriber do not constitute or are not part of the family of such subscriber. The first proviso to Rule 7 enjoins upon the subscriber to make nomination in favour of one or more members of his family. If at the time of making the nomination the subscriber has no family, the nomination made in favour of any other person shall become invalid in the event the subscriber acquires a family subsequently. Rule 30 provides for payment of the amount standing to the credit of the subscriber to the person in whose favour the nomination is made, if such nomination is made by the subscriber in accordance with the provisions of Rule 7 in favour of a member or members of his family. Sub clause (b) of Clause (i) thereof provides, inter alia, that the whole amount or the part thereof to which the nomination does not relate, as the case may be, shall notwithstanding any nomination purporting to be in favour of any person or persons other than a member or members of his family, become payable to the members of his family in equal shares.

Upon perusal of the scheme underlying the aforesaid Rules, it is apparent that the intention of the Legislature is to ensure that the amount of Provident Fund standing to the credit of the subscriber shall, on the death of the subscriber, be paid to the members of his family in accordance with the nomination made by the subscriber, if the nomination is made in favour of one or more members of the family of the subscriber. If the nomination made by the subscriber is in favour of the person or persons other than the family, such nomination shall be invalid under first proviso to Rule 7 and notwithstanding such nomination, the amount of Provident Fund standing to the credit of the subscriber shall be payable to the members of the family.

It is indisputable that the respondent No.3 alone constitutes the "family" as envisaged by Rule 2 (1)(c) of the Rules. On the date the said Mahendrabhai Battise made nomination in favour of the petitioners, the said Mahendrabhai Battise had already acquired the family i.e. he had married to the respondent No.3. The nomination made in favour of the present petitioners was, therefore, invalid. Notwithstanding the said nomination, it is the respondent No.3 alone who, being the only member of the family of the said Mahendrabhai Battise, would be entitled to receive the amount of Provident Fund standing to the credit of the said Mahendrabhai Battise.

As to the other terminal benefits, the payment thereof shall be governed by the provisions made in the Government Resolution dated 23rd June, 2000. Paragraph 2 of the said Resolution provides for nomination to be made by the servant concerned. In the present case, it is an admitted fact that the said Mahendrabhai had not made nomination with respect to the other terminal benefits. Therefore, the payment of the other terminal benefits shall be governed by paragraph 7 of the said Resolution. Clause (1) of the said paragraph provides for payment of the amount of terminal benefits to the members of the family of the servant, enumerated therein. The relations considered to be the members of the family in the said paragraph do not include the father and the mother of the Government servant. Clause (2) of the said paragraph provides for payment of the terminal benefits to the relations of the Government servant enumerated in the said clause provided relations referred to in clause (1) of the said paragraph 7 do not exist. The relations enumerated in clause (2) of the said paragraph 7 do include the father and the mother of the Government servant. In the present case, the respondent, the widow of the said Mahendrabhai Battise, would be the only member of the family of the said Mahendrabhai Battise enumerated in clause (1) of the said paragraph 7. In my view, therefore, the respondent No.3 alone is entitled to receive the terminal benefits payable on the death of the said Mahendrabhai Battise.

In above view of the matter, the petition is dismissed. Notice is discharged. Ad-interim order stands vacated. The Registry shall remit the sum of Rs.67,636=00 deposited in this Court on 24th June, 2003 to the respondent No.3.

This order is not intended to settle the claims between the petitioners and the respondent No.3. In the event the petitioner No.1 or any other person has a claim

over the said terminal benefits, the petitioner No.1 or such other person shall be at liberty to approach the Civil Court for settlement of such right and for recovery of such amount from the respondent No.3.

(Ms. R.M.Doshit, J.)

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